

---

HOUSE BILL 2718

---

State of Washington

61st Legislature

2010 Regular Session

By Representatives Shea, Ross, Pearson, Johnson, Haler, Klippert, Angel, Taylor, Condotta, Roach, Orcutt, Schmick, Fagan, McCune, and Warnick

Read first time 01/12/10. Referred to Committee on Judiciary.

1 AN ACT Relating to criminal defendants who are guilty and mentally  
2 ill; amending RCW 10.77.040 and 9.94A.501; and adding a new section to  
3 chapter 10.77 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 10.77 RCW  
6 to read as follows:

7 (1) A defendant who offers a timely defense of insanity under RCW  
8 10.77.030 may be found "guilty and mentally ill" at trial if the trier  
9 of fact finds that:

10 (a) The state has proven beyond a reasonable doubt that the  
11 defendant is guilty of the crime charged;

12 (b) The defendant has failed to prove by a preponderance of the  
13 evidence the asserted insanity defense; and

14 (c) The defendant or the state has proven by a preponderance of the  
15 evidence that the defendant was mentally ill at the time of the  
16 commission of the offense and that the defendant's actions at the time  
17 of the commission of the offense were affected by symptoms of mental  
18 illness.

1 (2) A defendant who waives the right to trial may plead guilty and  
2 mentally ill. No plea of guilty and mentally ill shall be accepted by  
3 the court unless the defendant has undergone examination by a  
4 psychologist or psychiatrist, and following a review of the medical  
5 evidence and a hearing on the defendant's mental condition, the court  
6 is satisfied that there is a factual basis for the plea of guilty and  
7 mentally ill. If the court refuses to accept a defendant's plea of  
8 guilty and mentally ill, the defendant shall be permitted to withdraw  
9 the plea.

10 (3) For the purposes of sentencing, a finding of guilty and  
11 mentally ill shall be treated the equivalent as a finding of guilty.  
12 A defendant who is found guilty and mentally ill may receive any  
13 sentence, including a standard range sentence or an exceptional  
14 sentence, which could have lawfully been imposed if the defendant were  
15 found guilty of the same offense.

16 (4) A defendant who is sentenced as guilty and mentally ill shall  
17 be under the jurisdiction of the department of corrections. If the  
18 defendant's sentence calls for a term of confinement, the defendant  
19 shall be committed to the custody of the department of social and  
20 health services, which shall place the defendant in a secure mental  
21 health facility for an initial period of mental health treatment and  
22 evaluation. Following this period, the defendant shall be discharged  
23 to the custody of the department of corrections for the balance of the  
24 defendant's sentence.

25 (a) A defendant in the custody of the department of social and  
26 health services who cooperates with treatment shall remain in the  
27 custody of the department of social and health services only for such  
28 time as is reasonably necessary to stabilize the defendant's condition  
29 and determine an appropriate course of treatment for the defendant  
30 within the department of corrections. A defendant who refuses to  
31 cooperate with treatment must be discharged to the custody of the  
32 department of corrections. The decision to discharge the defendant to  
33 the custody of the department of corrections shall be made at the sole  
34 discretion of the department of social and health services.

35 (b) The department of social and health services shall discharge a  
36 defendant under this subsection within ninety days, or submit written  
37 justification to the department of corrections why continued treatment  
38 is necessary in order to achieve the goals in (a) of this subsection.

1 Lack of success in treatment, which is proximately caused by the  
2 defendant, is not justification for failing to discharge a defendant.  
3 At the time of discharge, the department of social and health services  
4 shall provide the department of corrections with a report describing  
5 the defendant's condition and recommended course of treatment, and will  
6 provide the department of corrections with any requested medical  
7 information relating to the treatment of the defendant.

8 (c) A defendant committed to the custody of the department of  
9 social and health services under this section shall not be confined for  
10 longer than the confinement term of the defendant's sentence, and shall  
11 be eligible for earned release time under RCW 9.94A.728, as determined  
12 jointly by the department of corrections and the department of social  
13 and health services.

14 (d) A defendant committed to the custody of the department of  
15 social and health services under this section shall not be eligible for  
16 unescorted privileges on the grounds or outside the grounds of a secure  
17 mental health facility without the written permission of the secretary  
18 of the department of corrections or the secretary's designee.

19 (5) The department of corrections and department of social and  
20 health services may adopt rules or make agreements necessary for the  
21 implementation of this section.

22 (6) For the purposes of this section, the terms "mental illness"  
23 and "mentally ill" refer to a substantial disorder of thought, mood, or  
24 behavior that has a substantial adverse effect on the defendant's  
25 cognitive or volitional functions, but not rising to the level of  
26 insanity under RCW 9A.12.010.

27 **Sec. 2.** RCW 10.77.040 and 1998 c 297 s 33 are each amended to read  
28 as follows:

29 Whenever the issue of insanity is submitted to the jury, the court  
30 shall instruct the jury to return a special verdict in substantially  
31 the following form:

32 answer  
33 yes or no  
34 1. Did the defendant commit the act  
35 charged? .....

- 1    2.    If your answer to number 1 is yes,  
 2    do you acquit him or her because of  
 3    insanity existing at the time of the  
 4    act charged?                                      .....
- 5    3.    If your answer to number 2 is no,  
 6    has the defendant or the state proven  
 7    by a preponderance of the evidence  
 8    that the defendant was mentally ill at  
 9    the time of the commission of the  
 10    offense, and that the defendant's  
 11    actions at the time of the  
 12    commission of the offense were  
 13    affected by symptoms of mental  
 14    illness?
- 15    4.    If your answer to number 2 is yes, is  
 16    the defendant a substantial danger to  
 17    other persons unless kept under  
 18    further control by the court or other  
 19    persons or institutions?                                      .....
- 20    ((4.)) If your answer to number 2 is yes,  
 21    5.    does the defendant present a  
 22    substantial likelihood of committing  
 23    criminal acts jeopardizing public  
 24    safety or security unless kept under  
 25    further control by the court or other  
 26    persons or institutions?                                      .....
- 27    ((5.)) If your answers to either number  
 28    6.    ((3)) 4 or number ((4)) 5 is yes, is it  
 29    in the best interests of the defendant  
 30    and others that the defendant be  
 31    placed in treatment that is less  
 32    restrictive than detention in a state  
 33    mental hospital?                                      .....

34                      **Sec. 3.**    RCW 9.94A.501 and 2009 c 376 s 2 are each amended to read  
 35 as follows:

- 36                      (1) The department shall supervise every offender convicted of a  
 37 misdemeanor or gross misdemeanor offense who is sentenced to probation

1 in superior court, pursuant to RCW 9.92.060, 9.95.204, or 9.95.210, for  
2 an offense included in (a) and (b) of this subsection. The superior  
3 court shall order probation for:

4 (a) Offenders convicted of fourth degree assault, violation of a  
5 domestic violence court order pursuant to RCW 10.99.040, 10.99.050,  
6 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145,  
7 and who also have a prior conviction for one or more of the following:

- 8 (i) A violent offense;
- 9 (ii) A sex offense;
- 10 (iii) A crime against a person as provided in RCW 9.94A.411;
- 11 (iv) Fourth degree assault; or
- 12 (v) Violation of a domestic violence court order; and

13 (b) Offenders convicted of:  
14 (i) Sexual misconduct with a minor second degree;  
15 (ii) Custodial sexual misconduct second degree;  
16 (iii) Communication with a minor for immoral purposes; and  
17 (iv) Failure to register pursuant to RCW 9A.44.130.

18 (2) Misdemeanor and gross misdemeanor offenders supervised by the  
19 department pursuant to this section shall be placed on community  
20 custody.

21 (3) The department shall supervise every felony offender sentenced  
22 to community custody whose risk assessment, conducted pursuant to  
23 subsection (6) of this section, classifies the offender as one who is  
24 at a high risk to reoffend.

25 (4) Notwithstanding any other provision of this section, the  
26 department shall supervise an offender sentenced to community custody  
27 regardless of risk classification if the offender:

28 (a) Has a current conviction for a sex offense or a serious violent  
29 offense as defined in RCW 9.94A.030;

30 (b) Has been identified by the department as a dangerous mentally  
31 ill offender pursuant to RCW 72.09.370;

32 (c) Has an indeterminate sentence and is subject to parole pursuant  
33 to RCW 9.95.017;

34 (d) Was found guilty and mentally ill under section 1 of this act;

35 (e) Was sentenced under RCW 9.94A.650, 9.94A.660, or 9.94A.670; or

36 ~~((e))~~ (f) Is subject to supervision pursuant to RCW 9.94A.745.

37 (5) The department is not authorized to, and may not, supervise any

1 offender sentenced to a term of community custody or any probationer  
2 unless the offender or probationer is one for whom supervision is  
3 required under subsection (1), (2), (3), or (4) of this section.

4 (6) The department shall conduct a risk assessment for every felony  
5 offender sentenced to a term of community custody who may be subject to  
6 supervision under this section.

--- END ---